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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,661	03/01/2004	Dane Q. Robinson	26927.00015	2719

7590 08/13/2007
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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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08/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,661

Applicant(s)

ROBINSON, DANE Q.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-20 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-20,23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-20,23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jisander (5,769,898) in view of Robinson (6,030,218).

With respect to claim 1, Jisander discloses a device to assist in regenerating bone, the device configured to at least partially surround the bone to be regenerated and defining a cavity (17) next to the bone, the device further including one or more openings, as best seen at 2, 2a; through which a material may be placed into the cavity, as best seen in FIG. 9, the cavity for retaining the material next to the bone; as best seen in FIG.9, the material comprising a substance for simulating bone growth; asset forth in column 4, lines 40-45.

With respect to claims 3-20, 23-27, Jisander discloses al the limitations, asset forth in column 3, lines 1-67, column 4, lines 1-60; and as best seen in FIGS.1-9.

It is noted that Jisander did not teach that the device is comprised of wire mesh; as claimed by applicant. However, in a similar art, Robinson evidences the use of a device comprising a wire mesh (abstract) to substantially overlay the bone structure and the spaced provided for subsequent bone growth.

Therefore, given the teaching of Robinson, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of

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Jisander, as taught by Robinson, to substantially overlay the bone structure and the spaced provided for subsequent bone growth.

Claims 1,3-20,23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jisander (5,769,898) in view of Schmid et al. (5,306,149).

With respect to claim 1, Jisander discloses a device to assist in regenerating bone, the device configured to at least partially surround the bone to be regenerated and defining a cavity (17) next to the bone, the device further including one or more openings, as best seen at 2, 2a; through which a material may be placed into the cavity, as best seen in FIG. 9, the cavity for retaining the material next to the bone; as best seen in FIG.9, the material comprising a substance for simulating bone growth; asset forth in column 4, lines 40-45.

With respect to claims 3-20, 23-27, Jisander discloses al the limitations, asset forth in column 3, lines 1-67, column 4, lines 1-60; and as best seen in FIGS.1-9.

It is noted that Jisander did not teach that the device is comprised of wire mesh; as claimed by applicant. However, in a similar art, Schmid et al. evidence the use of a device comprising a wire mesh (FIG.4) to inhibit the propagation of infection and the deposition of microorganism, and to provide favorable conditions for the growth of new bone tissue and to promote the deposition of bone material.

Therefore, given the teaching of Schmid et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Jisander, as taught by Schmid et al, to inhibit the propagation of infection and the

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deposition of microorganism, and to provide favorable conditions for the growth of new bone tissue and to promote the deposition of bone material.

Response to Amendment

Applicant's arguments, see REmarks, filed 5/21/07, with respect to the rejection(s) of claim(s) 1-26 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Schmid et al/Robinson.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
July 27, 2007


PEDRO PHILOGENE
PRIMARY EXAMINER